

Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of)
)
Telecommunications Relay Services)
And Speech-to-Speech Services for) CC Docket No. 98-67
Individuals with Hearing and Speech)
Disabilities)
_____)

COMMENTS ON PETITIONS FOR VRS WAIVERS
AND REQUEST FOR CLARIFICATION

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SUMMARY

Communication Service for the Deaf, Inc. (CSD) supports the petitions filed by Hamilton Relay, Inc. and Hands On Video Relay Service to extend the previously established VRS waivers on equal access to interexchange carriers, long distance billing, automated emergency call handling, pay per call services, and speed of answer until January 1, 2008. CSD supports these waivers given the technical infeasibility of these requirements, the newly established VRS interim rate and the impact this is having on the ability of VRS providers to achieve minimum standards, the continued infancy of VRS as compared to traditional TRS, and the considerable risks associated with the provision of VRS at the present time. CSD submits that the VRS waivers currently in place must be extended immediately to ensure that consumers can continue to receive video based relay services beyond December 31, 2003.

CSD understands that the FCC has already granted a permanent waiver for VRS provided *in sign languages* other than ASL, and does not believe an extension of that waiver is necessary at this time. CSD believes there is some confusion, however, over whether non-shared language translation services that enable individuals who use ASL to communicate with individuals who speak Spanish is currently a reimbursable expense. CSD seeks clarification as to whether VRS providers may recover costs associated with the provision of this service pending the outcome of the FCC's proceeding on this issue.

CSD agrees with Hamilton that technical difficulties associated with the provision of automatic call forwarding to sign language users and voice initiated calls, including VCO and HCO, warrant FCC waivers of these services at this time. In addition, CSD supports Hands On's request to allow credit card billing for international calls. CSD also

agrees with Hands On that visually sexually explicit calls designed to harass VRS agents should not have to be tolerated by those agents. Although CSD does not wish to determine the handling of calls based on call content, it agrees that a waiver for visually explicit calls involving sexual conduct is both appropriate and necessary to protect VRS agents.

CSD supports requests to extend or grant the above waivers until January 1, 2008, to coincide with the expiration dates of other VRS and IP waivers. Until that time, CSD agrees that it is appropriate for providers to produce annual reports on progress made with respect to waived services. CSD recommends that in order to reduce confusion with respect to the many waivers now granted – for VRS as well as other forms of TRS – the Commission provide a chart, table, or matrix that clearly delineates the nature and expiration dates for these various waivers.

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I. Introduction

Communication Service for the Deaf, Inc. (CSD) submits these comments in support of the petitions for video relay service (VRS) waivers and waiver extensions filed by Hamilton Relay Inc. (Hamilton) on September 15, 2003 and Hands On Video Relay Service (Hands On) on September 22, 2003. Several of the waivers at issue were granted in 2001 and are set to expire on December 31, 2003.¹ CSD maintains that the best interests of consumers will be served if the current waivers are extended to coincide with other waivers that will expire on January 1, 2008. In addition, CSD requests clarification of the FCC's rules on reimbursement for non-shared language translation.

As a consumer-based leader of relay and other services of, by, and for the deaf community, CSD believes that it is important to seek extension of the FCC's 2001 ruling because of its potential impact on this community. CSD fears that unless the waivers are continued, many, if not most providers will no longer be able to afford to offer VRS. This result would not only be contrary to the objectives of Title IV of the Americans with Disabilities Act (ADA), but would thwart the Commission's interest in furthering

¹ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Order ("VRS Waiver Order"), CC Dkt 98-67, DA 01-3029 (rel. December 31, 2001).

competition within the telecommunications industry and adversely limit provider choice among VRS consumers.

II. Existing Waivers

In the FCC's VRS Waiver Order and its more recent IP Relay Order,² the Commission concluded that technical infeasibilities prevented VRS and IP providers from being able to meet several of the minimum standards otherwise mandated for telecommunications relay services (TRS). We agree with Hamilton and Hands On that the provision of these relay features are still not technically feasible.

A. Equal Access to Interexchange Carriers and Long Distance Billing

As the Commission noted in its Order on IP Relay, there currently exists no technical solution that will allow VRS providers to accurately identify the originating IP location of the inbound caller and map this to the correlating outbound POTS location of the outbound caller. Accordingly, VRS providers are unable to offer users their choice of long distance carrier for billing purposes. Because VRS providers would incur greater costs to provide equal access to interexchange carriers than they would recovering consumer toll revenue, the consumers, the Interstate TRS Fund, and the providers all stand to gain by extending the waiver for the carrier of choice mandate. The FCC has agreed that an adequate alternative to the provision of carrier or choice or billing for long distance services is the provision of free long distance calling through VRS. CSD urges the Commission to allow providers to continue offering this as an alternative to these TRS minimum standards. CSD believes that while technology will become available that will allow providers to approximate the location of an IP user, the ability to consistently

² *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities* ("IP Relay Order"), Declaratory Ruling and Second Further Notice of Proposed Rulemaking, CC Dkt. No. 98-67, FCC 02-121(2002).

and accurately do so remains unavailable at the present time and is not likely to be available within the next several years.

B. Automatic Processing of Emergency Calls

In its IP Relay Order, the Commission found that there currently exists no technical solution that will allow VRS providers to accurately identify the originating IP location of the inbound caller and convey this to a Public Safety Answering Point call-taker.³ CSD does have in place a system whereby the inbound caller can optionally provide end-user information – including location information – through a caller profile, to enable our VRS agents to offer assistance through a connection to a corresponding PSAP. However, this is not always an effective means of emergency support, because if a caller uses his or her VRS customer profile from a location other than the one specified in the profile on a given call, the VRS agent has no way of knowing the caller’s location has been altered on that call.

CSD believes that while technology will become available that will allow providers to approximate the location of an IP user within a sixty mile region, the ability to consistently and accurately do so down to a specific physical address and location remains unavailable and is not likely to be possible within the next several years.

C. Pay-Per-Call (900) Services

There currently exists no technical solution that will allow VRS providers to offer users the ability to pass along end user billing for pay-per-call services. This is because of the inability to accurately identify the originating IP location of the inbound caller and map this to the correlating outbound POTS location of the outbound caller. CSD believes that while technology will become available that will allow providers to approximate the

³ IP Relay Order at ¶30.

location of an IP user, the ability to consistently and accurately do so remains unavailable and is not likely to be possible within the next several years.

Additionally, the number of attempts to complete these types of calls through traditional TRS as well as VRS has been extremely low. CSD has received fewer than ten end user requests for this type of service during the past three years in its capacity as a VRS provider under Sprint.

D. Speed of Answer

In the past, the FCC waived the mandate for VRS providers to answer 85% of all incoming calls within 10 seconds because demand for VRS was still developing and the Commission did not want to take action that would keep potential competitors from entering the VRS market. In addition, the FCC waived this requirement because of its interest in stimulating VRS growth.⁴

Prior to the reduction in the VRS rates contained in the FCC's Interim Order issued on June 30th, 2003, CSD had achieved success in complying with the FCC's minimum standard with respect to the speed of answering VRS calls.⁵ Since the severe reduction in rate, however, CSD's users have experienced reduced hours of operation and longer answer times during peak periods and CSD's interpreters have experienced higher occupancy levels in order to achieve necessary efficiencies. Should the Commission's rate rise to a level that meets or exceeds the NECA recommended rates for VRS, CSD would once again be able to staff adequate positions to absorb spikes in call volumes and allow for adequate breaks for VRS agents. This, in turn, would enable CSD to ultimately comply with the speed of answer minimum standard. For the time being, the current

⁴ VRS Waiver Order at ¶16.

⁵ CSD had also been able to offer VRS 24 hours a day, 7 days a week, even though this mandate has also been waived for VRS. Since the reduction in VRS rates, however, CSD has been forced to cut back its VRS hours.

uncertainty in the rate prevents CSD from being able to commit to any service level requirements without significant financial risk. CSD therefore supports the request by Hamilton and Hands On to extend the waiver for the speed of answer minimum requirement at this time.

E. Spanish Relay

Hamilton seeks clarification that the Commission's waiver of Spanish VRS is indefinite. In its Memorandum Opinion and Order of December 21, 2001,⁶ the Commission made clear that this waiver pertained to VRS calls provided in *sign languages* other than American Sign Language (ASL). At that time, the Commission explained that it would be difficult to find and staff VRS with CAs who were fluent in multiple sign languages. Additionally, the FCC explained that:

sign languages vary from one country to another and there are multiple sign language 'dialects' for the various Spanish speaking countries around the world. To provide CAs that are able to interpret in all of these various dialects at a time when VRS is in its infancy would be unduly burdensome to VRS providers.”⁷

CSD agrees with Hamilton that an indefinite waiver for this type of service already exists and that it is unnecessary to seek its extension at this time, or until such time that it is revoked by the Commission.

What the Commission's December 21, 2001 Order did not address was VRS between individuals who use ASL to communicate and individuals who speak Spanish. In recent comments submitted to the Commission in response to its Second TRS Improved Services Order, CSD urged that ASL to Spanish VRS be reimbursable, given

⁶ *In the Matter of Telecommunications Services for Individuals with Hearing and Speech Disabilities, Recommended TRS Cost Recovery Guidelines, Request by Hamilton Telephone Company for Clarification and Temporary Waivers, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* (Memorandum Opinion and Order), CC Dkt No. 98-67, FCC 01-371 (rel. December 21, 2001).

⁷ *Id.* At ¶ 27.

the huge increase in our nation's Spanish speaking population.⁸ Although CSD originally provided these services, it ceased doing so upon being informed by the TRS Fund Administrator that these were non-shared language translation services that were not yet authorized for reimbursement through the Interstate Relay Fund. Since CSD terminated these services, it has been receiving continual complaints from individuals who have expressed the desire to use ASL to Spanish VRS. Specifically, 33% of all service complaints for the past quarter (July, August, September) concerned CSD's failure to continue offering this VRS feature.

It is CSD's understanding that other VRS providers may be continuing to provide ASL to Spanish language non-shared translation services. CSD believes that there may be some confusion about what is and what is not permitted to receive reimbursement from the Interstate Relay Fund. In its December 21st Memorandum Opinion and Order, the Commission stated, "if VRS providers choose to offer Spanish relay service they will be eligible for reimbursement from the TRS fund."⁹ CSD understands this to have referred to the provision of Spanish to Spanish VRS. Accordingly, in its Second Improved TRS Order, the Commission asked about the need for ASL to Spanish language translation and sought comment on *whether it should allow* such non-shared language translation service to be reimbursed from the Interstate Relay Fund.¹⁰ CSD seeks clarification as to whether this service is reimbursable pending the Commission's decision on this issue.

⁸ *In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 98-67, CG Docket No. 03-123, FCC 03-112 (rel. June 17, 2003) (Second Improved TRS Order). CSD also supported a *mandate* for ASL to Spanish language VRS, but only if the VRS reimbursement rate is revised to reflect an increase in the costs of staffing interpreters that have the skills to perform these interpreting services.

⁹ Memorandum Opinion and Order at ¶27.

¹⁰ Second Improved TRS Order at ¶¶98, 110-114.

III. New Waiver Requests

CSD supports the requests made by Hamilton and Hands On for new waivers of the following TRS mandates:

A. Automatic Call Forwarding

In its recently released Second Improved Services Order, the FCC did not mandate automatic call forwarding because it is a feature that the called party subscribes to through his or her own telephone company. Hamilton's petition notes, however, that while VRS calls can automatically be forwarded to voice numbers when a VRS caller initiates a call to a voice destination, this cannot occur when the called party is the sign language user. Hamilton explains: "VRS providers cannot provide automatic call forwarding when a voice user calls a VRS user because IP addresses and log-ins . . . do not contain the ANI information necessary to permit call forwarding using the traditional telephone network." CSD agrees with Hamilton's analysis and supports its request for a waiver of this TRS feature.

B. Voice Initiated Calls, including VCO and HCO¹¹

Hamilton notes that the FCC has already waived the mandate to offer voice initiated calls, including VCO and HCO, for IP Relay providers until January 2008.¹² CSD agrees with Hamilton that the technological limitations of providing VCO and HCO through VRS are the same as those for IP relay, *i.e.*, VRS providers, like IP providers, use the Internet for one leg of the call and cause the quality of voice transmissions to depend on the user's end equipment. Often this results in the quality of the voice

¹¹ Hamilton seems to also include within this category speech-to-speech (STS) relay calls. CSD understands STS to be indefinitely waived for VRS providers, and does not see the need to seek extension of this waiver at this time.

¹² Hamilton Waiver Request filed September 15, 2003, citing *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and*

communications to be very poor, making it difficult, and sometimes impossible for the VRS agent to accurately relay the conversation. For this reason, CSD supports Hamilton's request to grant a waiver of the VCO and HCO mandates for video relay services.

C. Permission to Require Credit Cards for International Calls

Hands On requests the FCC to confirm informal discussions it has had with FCC staff that VRS providers may require credit card billing to complete international calls. The main reason that Hands On gives for making this request is to enable it to curb abuse of these calls. CSD agrees that there is a need to curb abuses associated with international calls made through VRS and supports Hands On's request in this regard.¹³

D. Obscene and Harassing Calls

Hands On seeks clarification that it may immediately terminate calls *directed to VRS agents* where those agents are subject to harassment or indecency. It is CSD's understanding that such communications – as well as communications from callers that involve threats of violence made to VRS agents – are within the scope of calls that a VRS provider may terminate. Content that is directed to a VRS interpreter and not the other party to the call falls outside the scope of TRS calls – i.e., it is not part of the relayed conversation intended for coverage under the Americans with Disabilities Act.

Hands On also seeks clarification that it may terminate calls *directed to third parties* that “appear designed to harass or annoy such parties, either as a result of obscenity or other threatening or annoying conduct.” Hands On notes that 47 U.S.C.

Speech Disabilities, Order on Reconsideration, CC Dkt. No. 98-67, FCC 03-46 (rel. March 14, 2003) at ¶¶ 14, 18.

¹³ CSD wishes to note that unlike for TRS – where billing takes place from the point of origination to the point of destination – credit card billing for international VRS calls would have to measure the call from the VRS provider's location to the international destination because VRS providers are unable to determine

§223(a)(1) prohibits interstate calls that are obscene or indecent with the intent to harass or annoy another person. CSD supports Hands On's request for an indefinite waiver of these calls, but only to the extent that such calls discuss or involve visually pornographic, sexual, obscene or lewd conduct or harassment. Because of the visual nature of VRS, graphic conversations involving these types of communications can be quite distressing for a VRS agent. What occurs on a call involving visually sexual or lewd conduct is a far cry from the transparent telephone line that exists when one cannot see a TRS communications assistant who is typing and voicing for a traditional TRS call. If a VRS user acts out something that is sexually explicit while completing a conversation through VRS, the visual nature of the call forces the VRS agent to become part of the sexual act.

CSD does not believe that it is appropriate to force VRS agents to process calls that involve visually sexual conduct designed to harass the VRS agent, even if those calls are consensual between the calling and called party. Once the call becomes visually explicit, sexual harassment begins to take place with respect to the VRS agent who is forced to engage in the communication.

IV. Waivers Should be Extended Until 2008

In both the Commission's Order on Reconsideration extending waivers for IP Relay¹⁴ and its recently released Second Improved TRS Order,¹⁵ the Commission granted waivers of various mandatory minimum TRS requirements for a five year period, until January 1, 2008. In accordance with this time frame, CSD requests that the waivers discussed above similarly expire in 2008, so that all IP based technologies for TRS and VRS can be revisited at the same time. The issues impacting IP Relay are similar, if not

the location of the IP party making the call. This is not expected to impact the rates for the calls, as these are generally consistent within the United States as a whole.

¹⁴ Order on Reconsideration at ¶1.

¹⁵ Second Improved TRS Order at ¶36.

identical in many cases, to those impacting VRS. Accordingly, as technological advances affect the way that IP Relay calls are processed, so too will they affect the manner in which VRS can be provided. A five year period is also appropriate because it will provide VRS providers some ability to factor in the risks associated with the provision of this service over the next several years.

Finally, terminating all existing IP and VRS waivers at the same time will assist providers in meeting their TRS and VRS obligations. Currently, providers have a maze of waivers to work through that affect various minimum standards, and that are set to expire at assorted times. A uniform termination date for all waivers will facilitate compliance with these standards by eliminating much of this confusion.

The Commission's decision in this proceeding will be one of a string of orders addressing various TRS and VRS waiver requests.¹⁶ Over the past few years, it has become increasingly confusing for both providers and consumers to know which services are mandated and which are waived. CSD recommends that in an effort to minimize this confusion, the Commission prepare a chart, table or matrix of existing waivers, including the expiration date for each of these waivers. This will eliminate uncertainties surrounding these waivers and provide consumers with guidance on their rights to various relay services.

V. Annual Reports

CSD supports both Hands On's and Hamilton's suggestion that if granted, the waivers should be conditioned on the provision of annual reports to the FCC that detail technological changes as well as progress made toward fulfilling the TRS mandates that

¹⁶ Various waivers have also been granted with respect to the provision of speech-to-speech TRS and now, CapTel services.

have been waived.¹⁷ CSD also agrees that providers should be permitted to roll these progress reports into the April 16th annual report now due for other IP and VRS waivers.

VI. Conclusion

In the past, the Commission has consistently considered the impact of Internet based protocols on TRS and VRS. Based on the arguments accepted by the Commission for IP Relay, as well as those presented herein for VRS, CSD submits that consumers would be best served and that the intent of the ADA would be most readily achieved by extending waivers for the above minimum standards until January 1, 2008. Were these waivers to expire on December 31, 2003, CSD would not be in a position to continue providing VRS as of January 1, 2004 and VRS would cease unless state TRS administrators provided alternate means for funding the service.

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¹⁷ It is CSD's understanding that where a given relay service is jointly provided by a common carrier and a subcontractor – such as is the case with Sprint and CSD – these primary and secondary relay providers may jointly submit this annual report.